TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 277.

THE UNITED STATES, APPELLANT,

vs.

AMMEN FARENHOLT.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 28, 1906.

(20232.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

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THE UNITED STATES, APPELLANT,

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32246—06

1 In the Court of Claims.

AMMEN FARENHOLT
v.
THE UNITED STATES } No. 26191.

I. *Petition.—Filed September 8, 1904.*

To the Honorable the Court of Claims:

The claimant, Ammen Farenholt, respectfully represents:

I. That he entered the service as an assistant surgeon May 29, 1894, and was promoted and reached the grade of passed assistant surgeon with the rank of lieutenant on December 26, 1900, and held said grade and rank during all the times hereinafter mentioned. From December 26, 1900, to July 27, 1901, he was on duty attached to the U. S. S. "Concord" and U. S. S. "Oregon," beyond the limits of the States comprising the Union, and was paid the unmounted pay of a lieutenant in the Navy at twenty-one hundred and sixty dollars a year.

II. During said period he claims pay at the rate of twenty-six hundred and forty dollars a year, as follows:

The mounted pay of a captain in the Army, at.....	$2,000.00
Twenty per cent increase for longevity pay after ten years' service.....	400.00
Ten per cent increase for services outside the limits of the United States.....	240.00
Total.....	$2,640.00

2 The above claim is made under the following laws: The act of March 3, 1899 (30 Stat. L., 1007), providing that officers of the Medical Corps of the Navy shall receive the same pay and allowances provided for officers in the corresponding rank in the Army; sections 1261 and 1262; R. S., fixing the pay of a captain after ten years' service at twenty-four hundred dollars a year; section 1466, R. S., providing that lieutenants in the Navy shall rank with captains in the Army; section 1168, R. S., fixing the pay of assistant surgeons in the Army with the rank of captain; the act of May 26, 1900 (31 Stat. L., 211), and the act of March 2, 1901 (31 Stat. L., 903), providing ten per cent increase of pay when beyond the limits of the States comprising the Union.

The difference, amounting to two hundred and eighty-two dollars and sixty-six cents, he claims.

No assignment or transfer of this claim, or of any part thereof or interest therein, has been made, and the claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States. And the claimant claims the sum of two hundred and eighty-two dollars and sixty-six cents ($282.66).

GEORGE A. & WM. B. KING,
Attorneys for Claimant.

U. S. NAVAL TRAINING STATION,
SAN FRANCISCO, CAL.

Ammen Farenholt, surgeon, U. S. Navy, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

A. FARENHOLT,
Surgeon, U. S. Navy.

Subscribed and sworn to before me this 31st day of August, 1904.

W. H. WHITING,
[SEAL.] *Rear-Admiral, U. S. Navy.*

3 II. *Traverse.—Filed March 22, 1906.*

In the Court of Claims of the United States, December Term, A. D. 1905–6.

AMMEN FARENHOLT
vs.
THE UNITED STATES. } No. 26191.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

J. A. VAN ORSDEL,
Assistant Attorney-General.

4 III. *Argument and submission.*

This cause was argued by Mr. William B. King for the claimant, and Mr. John Q. Thompson for the defendants, on the 22nd day of March, 1906, and submitted.

5 Court of Claims. No. 26191.

IV. *Findings of fact and conclusion of law.—Filed March 26, 1906.*

AMMEN FARENHOLT
v.
THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT:

I.

The claimant, Ammen Farenholt, entered the naval service as an assistant surgeon May 29, 1894, and was promoted to the grade of passed assistant surgeon May 29, 1897. He attained the rank of lieutenant on December 26, 1900, and was a passed assistant surgeon in the Navy with the

rank of lieutenant during all of the time covered by this petition.

6 From December 26, 1900, to April 12, 1901, he was on sea duty attached to the U. S. S. "Concord." From April 12, 1901, to July 27, 1901, he was on sea duty attached to the U. S. S. "Oregon."

The claimant has already received pay at mounted rates for the periods before December 26, 1900, and after July 27, 1901, under the decisions of the Court of Claims in Richardson v. United States (38 C. Cls., 182), as applied by the Comptroller of the Treasury in Brownell's case (9 Comp. Dec. 676), but the Treasury Department declines to allow him mounted pay between these dates only because it considers that it is deprived of jurisdiction over the claim therefor by reason of a prior allowance and settlement of pay for the same period.

II.

PAY.

If entitled to army pay at mounted rates for this period the amount due would be as follows:

7 Pay of a lieutenant of the Navy, which corresponds in rank with a captain in the Army, mounted, from December 26, 1900, to July 27, 1901, with increased pay for length of service, 7 months and 2 days at $2,400.00 per annum $1,413.33

Less amount received for same period at $2,160.00 per annum $1,272.00

Difference $141.33

III.

PRIOR DECISION FOLLOWED.

Before the date of the decision of this court in the case of Richardson v. The United States (38 C. Cls., 182), January 5, 1903, assistant surgeons in the Navy received only the pay of an officer of corresponding rank in the Army "not mounted." By that decision it was held that they are entitled to the pay of such an officer "mounted." This decision was not appealed from and has been accepted as the proper interpretation of the law. It has been applied by ruling of the Comptroller of the Treasury to passed assistant surgeons.

8 All officers of the Medical Corps in grades for which there is in the Army pay table a distinction between "mounted" and "not mounted" pay, have ever since been paid at mounted rates of pay for their service from the date the personnel act took effect, July 1, 1899, to the present time.

CONCLUSION OF LAW.

Upon the foregoing findings of fact, the court decides as a conclusion of law, on the authority of Richardson v. United States (38 C. Cls., 182), that the claimant is entitled to recover against the United States the sum one hundred and forty-one dollars and thirty-three cents ($141.33).

By a majority of the court.

9 5. *Judgment of the court.*

AMMEN FARENHOLT
v.
UNITED STATES. } No. 26191.

At a Court of Claims held in the city of Washington on the 26th day of March, 1906, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant and do order, adjudge, and decree that the claimant, Ammen Farenholt, do have and recover of and from the United States the sum of one hundred and forty-one dollars and thirty-three cents ($141.33).

BY THE COURT.

10 7. *Application for, and allowance of, appeal.*

AMMEN FARNHOLT
vs.
THE UNITED STATES. } No. 26191.

From the judgment rendered in the above-entitled cause on the 26th day of March, 1906, in favor of claimant, the defendants, by their Attorney-General, on the 17th day of April, 1906, make application for, and give notice of, an appeal to the Supreme Court of the United States.

J. A. VAN ORSDEL,
Assistant Attorney-General.

Filed April 17, 1906.

Ordered: That the application for appeal in the above-entitled cause be allowed as prayed for.

BY THE COURT.

April 17, 1906.

11 Court of Claims.

AMMEN FARENHOLT
vs.
UNITED STATES. } No. 26191.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact and conclusion of law filed by the court; of the judgment of the court; of the application for, and allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 27th day of April, 1906.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

12 (Indorsement on cover:) File No., 20232. Court of Claims. Term No. 277. The United States, appellant, vs. Ammen Farenholt. Filed April 28th, 1906. File No., 20232.

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